THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.11085 of 1998

Dated 04-07-2007

Between:
The Divisional Manager, APSRTC, W.G.District.

..... PETITIONER

AND

G.Mohan & others.

.....RESPONDENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.11085 of 1998

O R D E R:

Aggrieved by the award of the Labour Court, Guntur in I.D.No.106 of 1992 dated 25-11-1997, the Divisional Manager, A.P.S.R.T.C, West Godavari District has invoked this Court's jurisdiction.

First respondent filed a petition under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Act') praying the Labour Court to direct the petitioner-Corporation to take him into service as a cleaner or in any other such post with continuity of service from the date the other staff were taken into service by the petitioner-Corporation along with back wages and attendant benefits.

In his claim statement filed before the Labour Court, the first respondent-workman contended that he had joined as a cleaner in bus No. APP 6255 of Sri Venkata Rama bus service in the year 1986, that the bus was plying between Perupalam and Narsapur and that the second respondent, in the writ petition was the bus owner. The workman claimed that he had continuously worked upto 01-10-1988, on which date the bus route was nationalized and the route was taken over by the petitioner-Corporation resulting in his losing the job. The first respondent-workman claimed that he was a displaced person and was paid Rs.250/- p.m. The workman contended that, while both the bus owner and the Union had sent a list of workers who had worked in the private bus service at the time of nationalization, the claim of some of the drivers and conductors was taken into consideration and that his claim was not taken into consideration. Despite repeated requests, both by the

bus owner and the workman, the petitioner-Corporation had not considered his case for appointment as a cleaner. The workman contended that since the Corporation was the successor-in-interest of the private bus owner, that business was carried out on the same route and merely because there was a change in Management, he was denied the benefit of compensation or issuance of notice by the bus owner. The workman contended that employers include assignees, legal representatives and successor-in-interest of the private bus owner, that the petitioner-Corporation had stepped into the shoes of the bus owner and since he had worked for more than one year in bus No.APP 6255, and was a displaced person, he was entitled to be absorbed and taken back into service by the petitioner-Corporation.

The second respondent, in his counter affidavit, submitted that there was no relationship of employer and employee between the petitioner-Corporation and the first respondent-workman either under a contract or a statute or otherwise, that it was not concerned with the services rendered by the workman with the private bus owner and since it was not the successor-in-interest to the private bus owner, though the route was nationalized under the Motor Vehicles Act, there was no duty or obligation cast on the petitioner-Corporation to take any of the erstwhile employees of the private bus operators into service who earlier ran the buses in the same route. It is stated that, on compassionate grounds, the Corporation had framed its own guidelines, rules and circulars to consider the claims of eligible, genuine and qualified erstwhile drivers and conductors not exceeding five for each such erstwhile operators.

The Labour Court held that the voluminous documentary evidence produced by the workman in the Court clearly and clinchingly established that the petitioner-Corporation had, later

appointed cleaners, artisans etc., in all other Districts including West Godavari District, to which District the workman belongs. The Labour Court also observed that this Court gave directions for absorbing cleaners also from the quota of displaced employees and that the workman was not absorbed only because he was neither a conductor nor a driver. The Labour Court held that the subsequent directions and the circulars clearly showed that even the cleaners and trimmers were entitled for absorption in the petitioner-Corporation since they were genuine displaced employees. The Labour Court, while observing that the workman was deprived of his legitimate right for appointment in the petitioner-Corporation and that the Corporation had to take him into service appointing him as a cleaner or in any other suitable post, directed the petitioner-Corporation to appoint him as a cleaner or in any other suitable post.

Sri R.Manmadha Reddy, learned standing counsel for the petitioner-Corporation, would vehemently contend that the award is in excess of the jurisdiction conferred on the Labour Court under the provisions of the Industrial Disputes Act. Learned counsel would contend that, since there is no employer employee relationship between the petitioner-Corporation and the first respondent-workman, the first respondent was not entitled to invoke the jurisdiction of the Labour Court under Section 2-A(2) of the Industrial Disputes Act since the petitioner-Corporation cannot be said to have either removed, retrenched or otherwise terminated his services. Learned counsel would submit that while the Corporation had, on compassionate grounds, issued circulars appointing five employees of each of the private buses, the routes of which were nationalized, that by itself did not confer jurisdiction on the Labour Court to entertain the claim of the workman.

Section 2-A of the Act reads thus:

2-A.Dismissal, etc., of an individual workman to be deemed to be an Industrial Dispute:-

Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

"(2) Notwithstanding anything in Section 10, any such workman as is specified in sub-section (1) may, make an application in the prescribed manner direct to the Labour Court for adjudication of the dispute referred to therein; and on receipt of such application the Labour Court shall have jurisdiction to adjudicate upon any matter in the dispute, as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act; and accordingly all the provisions of this Act, shall apply in relation to such dispute as they apply in relation to any other industrial dispute."—A.P. Act 32 of 1987. w.e.f.27-07-1987.

It is only when an employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, that any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination, confers jurisdiction on the Labour Court to decide upon these matters in dispute. The admitted facts are that the workman was employed in a private bus, the route of which was nationalized under the provisions of the Motor Vehicles Act. Consequent to nationalization of the route, the petitioner-Corporation herein started running its buses on some of these routes. Nationalization of the routes, on which the private owners buses were operating earlier, does not by itself make employees of these private buses, employees of the petitioner-Corporation. Termination of their services, consequent upon the bus routes being nationalized, was by the second respondent/private bus owner and not by the petitioner-Corporation. The dispute, if any, with regards termination of services of the first respondent-workman and his claim for payment of compensation and other benefits under the provisions of the

Industrial Disputes Act, can only be agitated against the second respondent and not against the petitioner-Corporation. The mere fact that the route was nationalized, pursuant to the provisions of the Motor Vehicles Act, would not necessitate the conclusion that the petitioner-Corporation is the successor-in-interest of the second respondent-bus owner. In the absence of an employer and employee relationship between the petitioner-Corporation and the first respondent-workman, the Labour Court had no jurisdiction to entertain the dispute under 2-A(2) of the Industrial Disputes Act. While this Court, under Article 226 of the Constitution of India, may well have issued directions from time to time against the petitioner herein since it is amenable to its writ jurisdiction, being an instrumentality of the State under Article 12 of the Constitution of India, that by itself did not confer jurisdiction on the Labour Court to entertain and adjudicate the dispute under
Section 2-A(2) of the Industrial Disputes Act. The Labour Court has clearly exceeded its jurisdiction in entertaining and adjudicating the dispute and in passing the award directing the petitioner-Corporation to appoint the first respondent-workman as a cleaner or in any other suitable post.

The award of the Labour Court, Guntur, in I.D.No.106 of 1992 dated 25-11-1997, is set aside and the writ petition is accordingly allowed. However, in the circumstances, without costs.

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04-07-2007

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